Supreme Court, U.S.
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No. 94-421

In The

Supreme Court of the United States

October Term, 1994

M. ASHLEY DICKERSON, a/k/a MAHALA ASHLEY DICKERSON, WILLIAM F. BOCAST, WILLIAM ANDREW AND MARY ANDREW,

Petitioners,

v.

DUKE WILLIAMS, JEAN WILLIAMS, and MATANUSKA-SUSITNA BOROUGH,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION

ALLAN E. TESCHE
RUSSELL, TESCHE & WAGG
510 L Street Suite 300
Anchorage, Alaska 99501
(907) 258-1747

Attorney for Matanuska-Susitna Borough

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTIONS PRESENTED

1. Whether Due Process or Equal Protection required notice to Ms. Dickerson of a Platting Board meeting where no action was taken and the Board's previous decision was only discussed informally by members of the Board and staff.

2. Whether any property interest of Ms. Dickerson has been taken by vacation of a portion of public roadway connecting the Borough road system to her property and construction of a new road providing continued public access leaving intact her private access over the older "Jeep Trail."

3. Whether the lower courts properly dismissed Civil Rights Act claims against the Borough because petitioners failed to show a constitutional deprivation and that actions of the Borough were motivated by racial animus.

4. Whether Dickerson can now challenge vacation of a portion of the public right-of-way in federal court because she did not timely avail herself of appellate remedies under the Matanuska-Susitna Borough Code of Ordinances and Alaska law.

PARTIES

The caption of the case in this Court lists all parties. For brevity, petitioners are referred to as "Dickerson" or "Ms. Dickerson."

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE PETITION FOR CERTIORARI 5

A. This Case Does Not Present an Important Federal Question the Supreme Court Should Review 5

1. There is no Federal Due Process (notice) Issue 5

2. Dickerson Failed to Prove that Access to Her Property Has Been Taken or Blocked by the Borough 7

3. Dickerson Failed to Prove the Borough Violated Equal Protection 9

B. This is Really a State Law Case Which Turns On Its Own Unique Facts 12

C. Dickerson Failed to Avail Herself of Available Appellate Remedies Under Alaska Law 13

CONCLUSION 14

TABLE OF AUTHORITIES

Page

Cases

Anderson v. Liberty Lobby, Inc., 744 U.S. 242 (1986) 11

Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977) 10

Celotex Corp. v. Catrett, 477 U.S. 317 (1986) 11

City of Los Angeles v. Heller, 475 U.S. 796 (1986) 11

Diedrich v. City of Ketchikan, 805 P.2d 362 (Alaska 1991) 14

Dolan v. City of Tigard, 129 L. Ed. 2d 304, 512 U.S. ___, 114 S. Ct. ___ (1994) 9

Massachusetts v. Feeny, 442 U.S. 256, 99 S. Ct. 2282, 60 L. Ed. 2d 870 (1979) 10

Matsushita Elec. Indus. Corp. v. Zenith Radio Corp., 475 U.S. 574 (1986) 11

Parratt v. Taylor, 541 U.S. 527, 101 S. Ct. 1908, 68 L. Ed. 2d 420 (1981) 14

Texas v. Mead, 465 U.S. 1041 (1984) 13

U.S. v. Johnson, 268 U.S. 227 (1925) 13

Washington v. Davis, 426 U.S. 229, 96 S. Ct. 2040, 48 L. Ed. 2d 597 (1976) 10

Statutes or Other Provisions Involved

42 U.S.C. § 1983 .... 4, 9, 11

AS 29.40.010(a) 1

TABLE OF AUTHORITIES – Continued

Page

AS 29.40.050 2

AS 29.40.060 2

AS 29.40.070 2

AS 29.40.080 2

AS 29.40.140(b) 2, 4

MSB 15.38 2

OPINIONS BELOW

The opinion of the United States District Court is set forth in an order issued by the Hon. James K. Singleton on March 3, 1993. [Pet. App. J1-14] Final judgment was entered by the District Court on March 10, 1993. [App. A]

The opinion of the Ninth Circuit Court of Appeals is set forth in a memorandum filed on July 22, 1994 [Pet. App. K1-11], and a final judgment entered on the same day. [App. B] A petition for rehearing before the Circuit Court was denied on August 24, 1994. [Pet. App. T1]

The opinions below are unreported.

JURISDICTION

The judgment of the Court of Appeals was entered on July 22, 1994. A Petition for Rehearing was denied on August 24, 1994. A petition for a writ of certiorari was presumably filed with this Court before it was received by the Matanuska-Susitna Borough on September 2, 1994. The petition may be reviewed by this Court under 28 U.S.C. Sec. 1254(1)

STATEMENT OF THE CASE

Organized under Alaska law as a second class municipal government, the Matanuska-Susitna Borough exercises the power to review and approve subdivisions of land within its boundaries. AS 29.40.010(a). [App. C] The Borough has enacted subdivision ordinances, created a Platting Board, and promulgated standards for public

improvements, including construction of access roads typically required of subdividers. AS 29.40.070; AS 29.40.080. [App. C] The Borough may also vacate existing public rights-of-way on lands within its boundaries. AS 29.40.140(b). [App. C] Administrative appeals are available to affected parties from decisions of the Borough Platting Board to higher borough bodies (AS 29.40.050 [App. C]; MSB 15.38 [App. D]) and, of course, to state courts under Alaska law. AS 29.40.060 [App. C]; MSB 15.38.230 [App. D].

In 1976, William and Mary Andrew subdivided certain real property located within the Borough into several smaller separate parcels. One of those parcels was then sold to Duke and Jean Williams, who now occupy a single-family residence located on that property. Anchorage attorneys M. Ashley Dickerson and Larry Card,[1] together with Minnie E. Card and Patricia Brower, own an adjoining, unsubdivided 40-acre tract located immediately east of the Williamses' property. Immediately west of the Williamses' property is an undeveloped tract owned by Appellant William F. Bocast. Access to the Williams and Dickerson property comes from the west along Trails End Road, which connects to the Williamses' property on its northwest corner. A map of the property as submitted to the trial court is found at Appendix E.

In connection with the 1976 subdivision and as required by the Borough, the Andrews conveyed a right-of-way "access for ingress and egress over and through . . . [the property subdivided] for the benefit of

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[1] Now a Superior Court Judge for the State of Alaska.

all owners of property adjacent to the said right-of-way . . . and to the public generally without limitation." This right-of-way easement ran east-west within an area 200 feet wide. [Pet. App. I1-2] Jeep trails were constructed within the roadway easement to provide vehicular access across the Andrews' property and to adjoining parcels.

On November 16, 1990, Duke and Jean Williams applied to the Borough Platting Board for permission to vacate "any public interest" in the southern 100-foot portion of the original 200' easement dedicated by the Andrews in 1976. The Board held several public hearings in 1991, and on June 20, 1991, passed Resolution 91-5-V [App. F] which vacated any public interest in the southern 100' portion of the easement dedicated in 1976. As a condition of that approval, the Board required the Williamses to provide "alternate, uninterrupted, equally constructed access through the subject property within the 100' remaining public easement before recordation of the vacation resolution." *Id.* The Board's action in no way affected existing rights of private landowners, including Ms. Dickerson, in the original, 200' easement. [Pet. 13-14]

On August 23, 1991, the Williamses built a new gravel road within the north 100-foot portion of the easement previously granted by the Andrews. [App. G] Completion of that road allowed continued public access to the Dickerson property within the remaining 100' public right-of-way. Photographs of the new public road are contained in Appendices H and I. Dickerson's old jeep trail is shown in the picture at Appendix J.

Local appellate remedies, including an appeal to the Borough's Board of Adjustment and Appeals and to

Alaska Superior Court, were available to Ms. Dickerson and her co-owners from the June 20, 1991 decision of the Platting Board. Neither Ms. Dickerson nor her co-owners elected to pursue those appeals. [App. K] Because the Borough Assembly declined to exercise its power to veto the vacation under Alaska state law, vacation of the right-of-way became final with recordation of Platting Board Resolution Serial No. 91-5-V. *Id.*; AS 29.40.140(b) [App. C].

Ms. Dickerson believes the newer road built by the Williamses is inferior and leads to a "deep swamp" on her property. [Pet. 13-14; Pet. App. L8, L10] She wants to subdivide her own property but does not want to improve the original roadway to Borough "Pioneer Access" constructions standards. [Pet. App. L5]

For herself and owners of two adjoining parcels, Ms. Dickerson brought an action in United States District Court for the District of Alaska on March 4, 1992, alleging that the Borough, together with Duke and Jean Williams, violated their rights under the Fifth and Fourteenth Amendments to the United States Constitution and unlawfully conspired to deprive them of those rights under 42 U.S.C. 1983 in connection with vacation of the southern 100′ of public roadway easement. Plaintiffs' Second Amended Complaint is found at petitioner's Appendix L1-11. Presented to the United States District Court for the District of Alaska on Ms. Dickerson's Motion for Partial Summary Judgment and the Borough's Cross Motion for Summary Judgment, those claims were decided on March 3, 1993, by the Honorable James K. Singleton, Jr. [Pet. App. J1-14]

An appeal from Judge Singleton's order of March 3, 1993, was taken by Ms. Dickerson, William Bocast, and William and Mary Andrew, to the Ninth Circuit Court of Appeals. On July 22, 1994, that court affirmed the district court and entered judgment for Appellees. [Pet. App. K1-11; App. B] The Ninth Circuit Court subsequently denied a petition for rehearing filed by Ms. Dickerson. [Pet. App. T1] From the circuit court's decision of July 22, 1994, Ms. Dickerson has petitioned for a writ of certiorari.

REASONS FOR DENYING THE PETITION FOR CERTIORARI

A. This Case Does Not Present an Important Federal Question the Supreme Court Should Review.

1. There is no Federal Due Process (notice) Issue.

The principal challenge made by Ms. Dickerson and the property owners she represents is a claim that insufficient advance notice was given of a decision of the Matanuska-Susitna Borough Platting Board on June 20, 1991, to vacate a portion of the public use easement over the Williamses' property, and accordingly, a claim she had inadequate opportunity to challenge that action before it became final. While vacation of public easements requires certain notice and opportunity for affected persons to be heard, it is also equally true that full and adequate notice was given to Ms. Dickerson and surrounding property owners before that decision was made. That uncontroverted proof lies principally in the actions of Ms. Dickerson and other opponents of the

vacation who energetically participated in Board proceedings before a final decision was made on June 20, 1991, to vacate the easement. The extent of Ms. Dickerson's participation in public proceedings of the Board conducted on January 3, 1991, May 16, 1991, and June 20, 1991, together with the advance notice she received of those public meetings is detailed in the affidavits of Rick Brown and Jill Carricaburu. [App. K; App. L] Ms. Dickerson cites no prior decision of this Court which would support her claim that while she actually attended the three meetings of the Platting Board and gave both written and oral testimony at those meetings, notice to her was somehow inadequate and violated Due Process.

Ms. Dickerson also claims inadequate notice of a later Platting Board meeting of August 15, 1991, during which the vacation was informally discussed by a member of staff and several members of the Board. She claims the Board reversed its earlier decision and excused the Williamses from certain Borough road construction standards she herself would have to meet if she subdivided her own property. No official action was taken by the Platting Board at its meeting of August 15, 1991, however, and the Board did not modify the conditions previously imposed in connection with vacation of the easement. [App. K] Because no official action was taken by the Board during that meeting, any comments made by Board members with respect to their interpretation of the Board's earlier action remained those of the individual members and not of the Board itself. The meeting of August 15, 1991, changed absolutely nothing. [App. K] Ms. Dickerson cites no persuasive federal authority to support her claim here that Due Process required she be

given advance notice of the meeting of August 15, 1991, where no official action was taken by the Board to modify earlier conditions imposed on the Board's approval of the vacation. With respect to notice, no federal question, and certainly no important one worthy of this Court's attention, is presented here.

2. Dickerson Failed to Prove that Access to Her Property Has Been Taken or Blocked by the Borough.

Dickerson's claim the Borough[2] has somehow prevented her from continuing to use the "old" jeep trail to reach her property is simply false. The right-of-way dedicated by the Andrews in 1976 guaranteed "access for ingress and egress over and through . . . [the property subdivided] *for the benefit of all owners of property adjacent to the said right of way* . . . and to the public generally without limitation." The right-of-way easements ran east-west within an area 200 feet in width. [Pet. App. I1-2]

The Platting Board's action affected only the public's right to continued use of the old jeep trail built in the southern 100' of the original 200' easement dedicated in 1976. [App. F] The Board's action did not affect Dickerson's existing private rights in the original 200-foot easement, because only the "public interest" in the southern

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[2] Ms. Dickerson has not cited authority in the record at any time to prove that the Matanuska-Susitna Borough, its Platting Board, or its officials have in any way participated in the alleged physical blockage of the "old" jeep trail which provided traditional access to her property.

100′ of the original easement was vacated by the Borough. [Pet. 13-14] Since these private rights have neither been condemned nor conveyed away, they remain intact.

What the Board did do, however, was to limit the public use easement to the north 100-foot portion of the original 200′ easement on condition that the Williamses build a new public road through that area. The new road was to provide "alternate, uninterrupted, equally constructed access" within the remaining 100′ public use easement. Depicted in photographs at Appendices H and I, this new road provides continued public access to the Dickerson parcel from the Borough's public road system.

Although the Borough believes that the new road which has been built is superior to the old "jeep trail" (its present condition is seen in a photograph at Appendix J), which had formerly provided access to the Dickerson property, Dickerson may still use the existing private easement to access her property by the old "jeep trail" located within the southern portion of the original 200′ right-of-way. Rather than suffering a diminution of their rights of access, Ms. Dickerson may now choose between two perfectly legal means of reaching her property: she can use the new public road the Williamses built to the north or continue to use the private easement granted to her and "all owners of property adjacent to the said right of way" in the original 200′ easement granted in 1976. [Pet. App. I1-2]

Ms. Dickerson concedes that "no private rights were affected" by the Borough's action, "nor could [they] be affected without a condemnation suit which was not done." [Pet. 13-14] As her private rights to continue to

use the old "jeep trail" to access her property are unaffected by vacation of any public right-of-way in the southern 100' of the 200' easement, and because she can use the new road constructed by the Williamses for that purpose as well, she has no claim the Borough denied her continued access to her property. Ms. Dickerson cites no persuasive decision of this Court for the proposition that her Due Process was violated by the Borough when it gave her additional access to her property over a new public road built by the Williamses and left intact her existing private easement over the older jeep trail in the original right-of-way. The Court's recent decision of *Dolan v. City of Tigard*, 129 L. Ed. 2d 304, 512 U.S. ___, 114 S. Ct ___ (1994) is not cited by Ms. Dickerson for good reason: *Dolan* entailed an effort by a local government to extract a conveyance of private property for public purposes in exchange for issue of a building permit; here, a private landowner claims a local government has somehow taken her property by requiring another landowner to build a new public road linking her property to the Borough's road system while leaving intact her existing private easement over an older right-of-way.

3. Dickerson Failed to Prove the Borough Violated Equal Protection

The essence of the federal equal protection claim brought by Ms. Dickerson under 42 U.S.C. § 1983 against the Borough is one based on alleged racial discrimination. Ms. Dickerson herself is Black. [Pet. App. L2] A federal claim based on racial discrimination must demonstrate a

discriminatory "purpose or intent" on the part of government officials who act not in spite of its adverse effects on an identifiable group but "because of" those effects on the targeted group. *See Massachusetts v. Feeny*, 442 U.S. 256, 279, 99 S. Ct. 2282, 2296, 60 L. Ed. 2d 870, 887 (1979); *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977); *Washington v. Davis*, 426 U.S. 229, 242, 96 S. Ct. 2040, 48 L. Ed. 2d 597 (1976).

To support her claim, Dickerson offered only the affidavit of Linda Andrew Wilbur to prove a racist statement allegedly made by Appellee Jean Williams.[3] Williams allegedly told Wilbur, "Well, I just don't want a bunch of Blacks back there, would you?" [Pet. App. B1-3] The record below contains *no* evidence indicating when the alleged statement was made, whether any person other than Ms. Wilbur heard the statement, where the statement was made, or if it was made to any Borough official or in connection with any Borough proceeding. Even if the statement were made as alleged, there is simply no evidence which links that statement in any fashion to the Matanuska-Susitna Borough, or its officials in this case. Instead, the only evidence cited by Ms. Dickerson to prove racial prejudice appears to have been made by one of the private parties to this action outside

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[3] Dickerson implies at pages 13-14 of her petition that because Williams had not hesitated to make this racist remark to Linda Wilbur, she must have repeated it to Borough officials. Dickerson also claims that during recesses Platting Board officials and Jean Williams even embraced each other and exchanged cigarettes. Unfortunately, these claims are not substantiated in the record.

of earshot of Borough officials and outside of official proceedings which led to vacation of the public easement.

The evidence Dickerson offered did not support the inference that the Borough's actions were motivated by racial prejudice sufficient to permit a reasonable juror to find for Ms. Dickerson in a discrimination claim against the Borough. Ms. Dickerson's evidentiary submissions did not satisfy the standard required by *Matsushita Elec. Indus. Corp. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Anderson v. Liberty Lobby, Inc.*, 744 U.S. 242, 250 (1986); and *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). Accordingly, the courts below properly found no violation of Equal Protection. Without evidence sufficient to support a finding of a violation of Equal Protection by the Borough or that with additional discovery that claim could be proven,[4] Ms. Dickerson has no claim against the Borough under 42 U.S.C. § 1983. *City of Los Angeles v. Heller*, 475 U.S. 796 (1986).

Dickerson simply asks this Court to review the trial court's decision on competing motions for summary judgment, in the same way she asked the Ninth Circuit Court below, but without showing how important questions of federal law remain undecided or that the action

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[4] Nowhere in the record is there any evidence of any claim or argument by Ms. Dickerson that more persuasive additional evidence could be obtained that would show actions of the Borough's Platting Board, including the allegedly secret meeting of August 15, 1991, were racially motivated. In the proceedings below, Ms. Dickerson never requested additional time to investigate or substantiate her claims in order to oppose the Borough's cross-motion for summary judgment.

below in any way conflicts with controlling opinions of this Court.

B. This is Really a State Law Case Which Turns On Its Own Unique Facts

This dispute does not involve a frontier issue of constitutional law, but instead, only the application of Alaska law to facts unique to a small subdivision carved out of America's last frontier.

The scope of the original roadway easement dedicated by the Andrews in 1976 for "access for ingress and egress over and through . . . [the property subdivided] for the benefit of all owners of property adjacent to the said right of way . . . and to the public generally without limitation" is a local issue properly decided not in the federal courts in Seattle, San Francisco, or Washington, D.C., but rather, by Alaska's courts under state law governing conveyances and rights-of-way. Any factual claim by Ms. Dickerson that the Borough somehow physically blocked her private access through her old jeep trail should be decided as well as an ordinary trespass claim under Alaska law, and not under the Constitution or Civil Rights Laws. Whether the Borough obeyed the substantive and procedural dictates of its own ordinances and Alaska statutes in vacating the public right-of-way is an issue best left to Alaskan, rather than federal courts. Similarly, whether the Borough would apply technical standards governing construction of Pioneer Access Roads to Dickerson's own subdivision, and whether she failed to exhaust available local appellate remedies upon vacation of a portion of the "old" easement, are also legal

issues significant only to the parties and are properly resolved under local law. Judge Singleton spoke appropriately for the federal judiciary on March 3, 1993, when he stated "[t]his is not a federal case" [Pet. App. J-13], and wisely decided not to involve the federal courts in what is simply a dispute between private landowners over exercise of private rights under the 1976 easement and the question of whether the Borough properly exercised its power under Alaska law to vacate a public right-of-way. Under *U.S. v. Johnson*, 268 U.S. 227 (1925) and *Texas v. Mead*, 465 U.S. 1041 (1984), certiorari is not appropriate here.

C. Dickerson Failed to Avail Herself of Available Appellate Remedies Under Alaska Law

Representing not only herself but the co-owners of her property as well, Ms. Dickerson attended all three public hearings of the Borough's Platting Board, and gave oral and written testimony before the Board approved the vacation on June 20, 1991. [App. K] At the conclusion of public testimony on June 20, 1991, the Board voted in open session to approve the vacation, subject to several conditions. [App. M] Unquestionably, Ms. Dickerson and the persons she represents knew of the Platting Board's final action during the meeting of June 20, 1991, because she was present during that meeting when the decision was made. For reasons still a mystery, Ms. Dickerson did not appeal that action to an intermediate Borough Board of Adjustment and Appeals, nor did she pursue any sort of administrative appeal from that decision to the courts of Alaska within 30 days as required under Alaska law.

[App. K] Instead, she waited more than eight (8) months or until March 4, 1992, before bringing an original action in federal court. Because Ms. Dickerson did not avail herself of any appellate remedy under Alaska law available after June 20, 1991, the Borough's decision to vacate the public right-of-way is now final as a matter of Alaska law. *See Diedrich v. City of Ketchikan*, 805 P.2d 362 (Alaska 1991)[5] The availability of adequate state remedies, including administrative appeals and resort to state courts, to correct the alleged constitutional deprivation by the Borough's Platting Board, precludes a federal challenge to that action. *See Parratt v. Taylor*, 541 U.S. 527, 101 S. Ct. 1908, 68 L. Ed. 2d 420 (1981). If the Platting Board's decision is final as a matter of Alaska law, this Court should not condone Dickerson's failure to timely pursue local appellate remedies by granting certiorari to lower federal courts that have already found her federal claims without merit.

CONCLUSION

This is not a federal case. At one level it is simply a dispute between Ms. Dickerson and the Williamses over whether she may continue to use a right-of-way granted to her and to surrounding private property owners in 1976. That question is one which lies properly in the courts of the state of Alaska under Alaska law. This case also represents only Ms. Dickerson's belated effort to use

[5] State and local laws governing appeals from vacations are excerpted in Appendices C and D.

the federal courts to challenge an action taken by the Borough which should have been brought in state court under Alaska law. At another level, this litigation is simply Ms. Dickerson's way of circumventing Borough subdivision regulations by seeking a federal order excusing her from minimum road construction standards required of persons subdividing land within the Matanuska-Susitna Borough. The application of those standards to any subdivision Ms. Dickerson may wish to pursue is purely a matter of state law for which adequate appellate remedies under Alaska law are guaranteed to Ms. Dickerson. Accordingly, this controversy should remain in Alaska.

Respectfully submitted,

ALLAN E. TESCHE
RUSSELL, TESCHE & WAGG
510 L Street Suite 300
Anchorage, Alaska 99501
(907) 258-1747

Attorney for Matanuska-Susitna Borough

APPENDICES

APPENDIX TABLE OF CONTENTS

		Page
APPENDIX A	Final Judgment District Court	App. 1
APPENDIX B	Final Judgment 9th Circuit Court	App. 3
APPENDIX C	Alaska Statutes	App. 5
APPENDIX D	Matanuska-Susitna Borough Code	App. 8
APPENDIX E	Map of Property	App. 12
APPENDIX F	Platting Board Resolution Serial No. 91-5-V	App. 13
APPENDIX G	Affidavit George Strother*	App. 16
APPENDIX H	Photograph of New Jeep Trail	App. 23
APPENDIX I	Photograph of New Jeep Trail	App. 24
APPENDIX J	Photograph of Old Jeep Trail	App. 25
APPENDIX K	Affidavit of Rick Brown*	App. 26
APPENDIX L	Affidavit of Jill Carricaburu*	App. 35
APPENDIX M	Platting Board Minutes 6/20/91	App. 38

*In the interest of brevity, exhibits to Affidavits are not provided.

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JUDGMENT IN A CIVIL CASE

M. Ashley Dickerson, William F. Bocast, William Andrew, Mary Andrew,
Plaintiffs

vs.

Case Number: A92-281

Duke Williams, Jean Williams, and Matanuska Susitna Borough,
Defendants

___ ***JURY VERDICT.*** *This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.*

XX ***DECISION BY COURT.*** *This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.*

IT IS ORDERED AND ADJUDGED

THAT the plaintiffs take nothing, that their action based upon 42 U.S.C. § 1983 be dismissed on the merits, and that their state law claims be dismissed without prejudice to their being brought in state court, and that the Defendants Duke Williams, Jean Williams and Matanuska Susitna Borough recover of the plaintiffs M. Ashley Dickerson, et al. their costs of the action.

APPROVED:

/s/ James K. Singleton
U.S. District Court Judge Singleton

3/10/93
Date

PHYLLIS RHODES
Clerk

/s/ Cathy A. Catterson
(By) Deputy Clerk

cc: O&J 4915
M. A. Dickerson
A. Tesche
C. RAY
APPEALS CLERK

APPENDIX B

JUDGMENT

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 93-35237
CT/AG#: CV-92-281-JKS

M. ASHLEY DICKERSON, aka Mahala Ashley Dickerson; WILLIAM F. BOCAST; WILLIAM ANDREW; MARY ANDREW

Plaintiffs – Appellants

v.

DUKE WILLIAMS; JEAN WILLIAMS; MATANUSKA SUSITNA BOROUGH

Defendants – Appellees

(Filed Sept. 6, 1994)

APPEAL FROM the United States District Court for the District of Alaska (Anchorage).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Alaska (Anchorage) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED. Costs taxed.

Filed and entered July 22, 1994.

cc: Dickerson
Tesche
Ray
Judge Singleton

APPENDIX C

ALASKA STATUTES

Title 22

Sec. 22 10.020 Jurisdiction of the superior court.

. . .

(d) The superior court has jurisdiction in all matters appealed to it from a subordinate court, or administrative agency when appeal is provided by law. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

Title 29

Chapter 40. Planning, Platting, and Land Use Regulation

Sec. 29.40.010 Planning, platting, and land use regulation. (a) A first or second class borough shall provide for planning, platting, and land use regulation on an areawide basis.

Sec. 29.40.050 Appeals from administrative decisions. (a) By ordinance the assembly shall provide for an appeal from an administrative decision of a municipal employee, board, or commission made in the enforcement, administration, or application of a land use regulation adopted under this chapter. The assembly may provide for an appeal to a court, hearing officer, board of adjustment, or other body. The assembly shall provide for an appeal from a decision on a request for a variance

from the terms of a land use regulation when literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the district.

(b) By ordinance the assembly may provide for appointment of a hearing officer, or for the composition, appointment, and terms of office of a board of adjustment or other body established to hear appeals from administrative actions. The assembly may define proper parties and prescribe evidentiary rules, standards of review, and remedies available to the hearing officer, board of adjustment, or other body.

Sec. 29.40.060 Judicial review. (a) The assembly shall provide by ordinance for an appeal by a municipal officer or person aggrieved from a decision of a hearing officer, board of adjustment, or other body to the superior court.

(b) An appeal to the superior court under this section is an administrative appeal heard solely on the record established by the hearing officer, board of adjustment, or other body.

Sec. 29.40.070 Platting regulation. By ordinance the assembly shall adopt platting requirements that may include, but are not limited to, the control of

(1) form, size, and other aspects of subdivision, dedications, and vacations of land;

(2) dimensions and design of lots;

(3) street width, arrangement, and rights-of-way, including requirements for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage, and other public utility facilities and improvements.;

(4) dedication of streets, rights-of-way, public utility easements and areas considered necessary by the platting authority for other public uses.

Sec. 29.40.080 Platting authority. (a) The assembly by ordinance shall establish a platting authority to administer subdivision regulations and to perform other duties as required by the assembly. The platting authority may consist of members of the planning commission or of other municipal residents.

(b) The assembly may by ordinance provide for an administrative official to act as the platting authority with regard to abbreviated plats.

Sec. 29.40.140 Hearing and Determination. (a) The platting authority shall consider the alteration or replat petition at a hearing and make its decision on the merits of the proposal.

(b) Vacation of a city street may not be made without the consent of the council. Vacation of a street in the borough area outside all cities may not be made without the consent of the assembly. The governing body shall have 30 days from the decision of the platting authority in which to veto a vacation of a street. If no veto is received by the platting authority within the 30-day period, consent is considered to have been given to the vacation.

APPENDIX D

MATANUSKA-SUSITNA BOROUGH CODE (MSB)

Chapter 15.38

BOARD OF APPEALS

15.38.010 Board established, delegation.

There is a Board of Adjustment and Appeals, which pursuant to AS 29.33 delegated the board of adjustment function of the Borough Assembly. The Board of Adjustment and Appeals shall hear appeals from the Platting Board, from the Planning Commission, shall hear all appeals from decisions on preliminary plats, variances, waivers, dedications, vacations, zoning enforcement, special use district enforcement, conditional uses and variances except for:

1. Appeals of enforcement orders under the Houston Land Use Ordinance which appeals are to the Houston City Council acting as the Board of Adjustment;

2. Appeals under the Wasilla Development Code which appeals are to the Wasilla City Council under MSB 17.44.433; and

3. Appeals under the Palmer Land use Ordinance, MSB 17.12

15.38.110 Commencement of appeal – Stay.

A decision of an Enforcement Officer, Board or Commission of the Borough is final unless an appeal of the final decision is commenced within fifteen days after the

action appealed from, including decision on reconsideration, on the application at issue. Upon commencement of an appeal, the decision appealed from is stayed until the decision on appeal becomes final, except that in the case of a zoning or special land use district enforcement proceeding, the Board or a court may issue an enforcement order based on a certificate of imminent peril to life or property made by the Enforcement Officer.

15.38.120 Appeals procedure.

A. An interested party, including but not limited to a Borough or City official, may file with the Board of Adjustment and Appeals a notice of appeal which must specify objections to the act or decision from which the appeal is taken in detail, must include the appellant's mailing address or that of his attorney and must be accompanied by a filing fee of one hundred dollars. The term "an interested party" is defined, for purposes of appeals from Platting Board actions, as:

1. The applicant before the Platting Board;

2. Any person adversely affected by the decision who appears before the Platting Board and makes an oral or written presentation; or

3. Any governmental agency.

B. The notice of appeal shall be filed with the Clerk within fifteen days from the date on which the alleged error in zoning or special use district enforcement by an officer of local government or decision of the Planning Commission or Platting Board was made. If an appeal is

not taken as provided in this subsection, the right to appeal is forfeited.

15.38.210 City Council or Assembly review of vacation.

A decision to grant a vacation is not effective unless approved by the City Council if the vacated area is within a city or by the Assembly if the vacated area is within the Borough area outside cities. The Council or Assembly shall have thirty days from receipt of the decision to approve the vacation. A vote resulting in a failure to approve a vacation shall constitute a veto of the vacation. If the vacation is not vetoed within the thirty-day period, the consent of the Council or Assembly shall be considered to have been given to the vacation. For this purpose, the Platting Board decision shall be the date that the Platting Board renders its decision, if there is no appeal or petition for reconsideration; and if there is an appeal or petition for reconsideration, the date of the decision upon reconsideration or appeal, whichever is the last action of the Platting Board or Board of Appeals.

15.38.230 Judicial review.

An appeal from a decision of the Board may be taken within the time prescribed in the Rules of Appellate Procedure, Part 600, of the State of Alaska, by any municipal officer, taxpayer or person, jointly or severally aggrieved. The Clerk shall estimate the cost of preparing the transcript of the public hearing and compiling the record on appeal. The appellant must deposit the estimated costs with the Clerk in advance. Upon completion of the record on appeal, the Clerk shall refund any excess

deposit or charge the appellant for costs exceeding the deposit.

16.10.065. Notice – Public hearing.

A. Notice of any public hearing required under this title shall be given in accordance with this section.

B. Forms of notice are as follows:

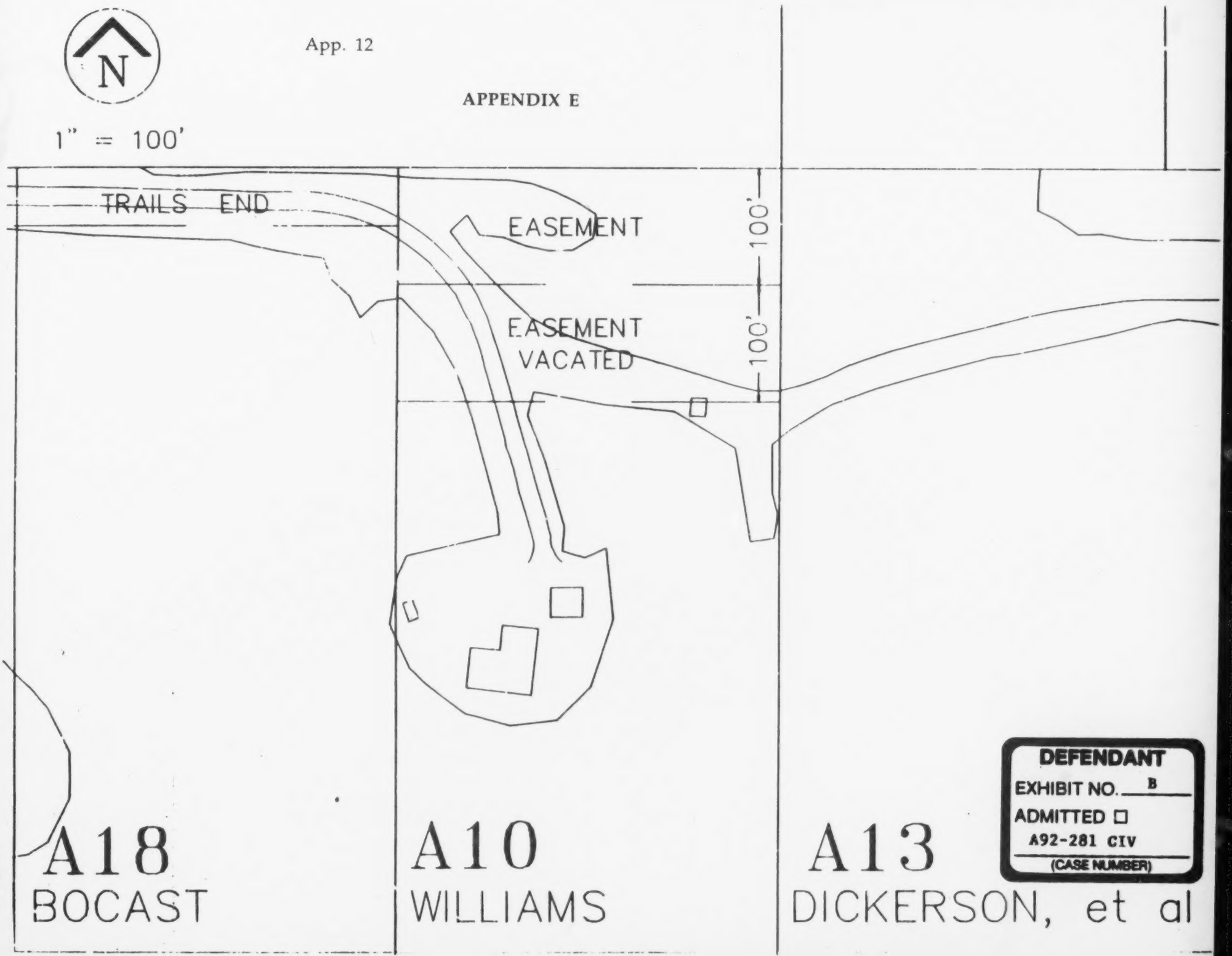
1. Publication in a newspaper of general circulation in the Borough one week prior to the public hearing; and

2. Mailing at least fifteen working days before the public hearing to all record owners of property within a distance of six hundred feet of the exterior boundary of the property that is the subject of the application, or to the record owners of the five tax parcels nearest the property that is the subject of the application, whichever is the greater number of persons, and, if the property described in the application lies within a recorded subdivision, to all persons holding a legal interest in property within that subdivision. As used in this subdivision, "record owner" means the person or persons listed as the owner on the property tax records of the Borough Assessor. The notice shall be mailed to the record owner at the address stated in the current property tax records of the Borough Assessor; and

. . .

F. The failure of any person to receive any notice required under this section, where the records of the Borough indicate the notice was provided in a timely and proper manner, shall not affect the validity of any proceeding under this title.

APPENDIX E


N
1" = 100'
TRAILS END
EASEMENT
100'
EASEMENT
VACATED
100'
A18
BOCAST
A10
WILLIAMS
A13
DICKERSON, et al
DEFENDANT
EXHIBIT NO. B
ADMITTED
A92-281 CIV
(CASE NUMBER)

APPENDIX F

MATANUSKA-SUSITNA BOROUGH
PLATTING BOARD
RESOLUTION SERIAL NO. 91 – 5 – V

BOOK 0661 PAGE 768

A RESOLUTION OF THE PLATTING BOARD OF THE MATANUSKA-SUSITNA BOROUGH APPROVING THE VACATION OF A PORTION OF A PUBLIC USE EASEMENT FOR TRAILS END RECORDED IN BOOK 121, PAGE 186 AFFECTING THE E1/2 E1/2 SW1/4 NE1/4 SECTION 30, TOWNSHIP 17 NORTH, RANGE 2 WEST, SEWARD MERIDIAN, ALASKA. LOCATED WITHIN THE PALMER RECORDING DISTRICT.

WHEREAS, Duke & Jean Williams petitioned the Platting Board of the Matanuska-Susitna Borough to vacate any public interest in a portion of a public use easement for Trails End recorded in Book 121, Page 186 affecting the E1/2 E1/2 SW1/4 NE1/4 Section 30, Township 17 North, Range 2 West, Seward Meridian, Alaska as the excessive right of way is unnecessary, a road running in a straight direction will be easier to develop, maintain and be safer; and

WHEREAS, notice of Public Hearing for the purpose of vacating any public interest was published and notices sent to affected property owners not signing the petition; and

WHEREAS, the Platting Board heard testimony for or against the petition and considered the merits of the petition; and

WHEREAS, the Platting Board approved the vacation request subject to the approval of the Matanuska-Susitna Borough Assembly within 30 days of the Platting Board action and providing alternate, uninterrupted, equally constructed access through the subject property within the 100' remainder easement prior to recordation of the vacation resolution; and

WHEREAS, as the Matanuska-Susitna Borough Assembly did not hold any regularly scheduled meetings within the 30 day time frame, the vacation request as approved by the Platting Board was automatically approved pursuant to AS 29.40.140(b); and

WHEREAS, the road was constructed to the conditions of approval and inspected and signed off by the Department of Public Works on August 23, 1991;

NOW THEREFORE, the Matanuska-Susitna Borough Platting Board resolves that any public interest in the southern 100' of the 200' public use easement for Trails End recorded in Book 121, Page 186 affecting the E1/2 E1/2 SW1/4 NE1/4 Section 30, Township 17 North, Range 2 West, Seward Meridian, Alaska is hereby vacated.

PASSED AND APPROVED by the Platting Board of the Matanuska-Susitna Borough, on the 20th day of June, 1991.

September 9, 1991

/s/ John Duffy
John Duffy, Planning Director
Matanuska-Susitna Borough

ATTEST:

/s/ Marilyn McGuire
Marilyn McGuire, Platting Clerk

(Seal)

91-010655

PALMER REC
DISTRICT 15-
REQUESTED BY /s/ Duke Williams

'91 SEP 10 PM 3 11

APPENDIX G

Allan E. Tesche, Esq.
Russell & Tesche
510 L Street, Suite 300
Anchorage, Alaska 99501
(907) 258-1747
Attorneys for Matanuska-Susitna Borough

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT ANCHORAGE

M. ASHLEY DICKERSON also known as MAHALA ASHLEY DICKERSON, and WILLIAM F. BOCAST, WILLIAM ANDREW, and MARY ANDREW,	)	
Plaintiffs,	)	Case No. A92-281
vs.	)	Civil
DUKE WILLIAMS, JEAN WILLIAMS, and MATANUSKA-SUSITNA BOROUGH,	)	
Defendants.	)	

AFFIDAVIT OF GEORGE STROTHER

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

GEORGE STROTHER being first duly sworn upon oath deposes and states:

1. I am presently employed by the Matanuska-Susitna Borough as Engineering Division Manager of the

Department of Public Works and have served in that capacity for approximately three years. I supervise Borough employees assigned to the Borough's Public Works Department who inspect subdivisions and determine compliance by subdividers with subdivision regulations and the terms and conditions of approvals granted by the Platting Board. I am a registered Civil Engineer and registered Land Surveyor by the State of Alaska.

2. Attached with this affidavit as Exhibit A is an aerial photograph taken in 1986 by a firm under contract to the Matanuska-Susitna Borough. With the photograph is an overlay (Exhibit B) prepared from official topographic maps maintained by the Borough. To the best of my knowledge, the information contained on the overlay is correct, and the photograph accurately depicts and property in question as it existed when the photograph was taken. Except for placement of the "new" roadway or jeep trail in the north 100 foot easement in 1991, the location of the older jeep trail, depicted in the photograph on the 40-acre Dickerson property, remains largely the same today. The lettered numbers on the overlay correspond to several of the separate photographs I took in the vicinity on July 20, 1992.

3. On May 16, 1991, I inspected the Williamses' property to make a preliminary determination over the feasibility of replacing existing trails in the south 100 foot portion of the easement with a new roadway to be located in the north 100 foot portion of the easement. From the initial field walkthrough, I did not see any great difficulty in building the road in the northern one-half of

the 200 foot public use easement. Attached to this affidavit as Exhibit C is a true and correct copy of my report to which stated that opinion.

4. Platting Board Resolution Serial No. 91-5-V required the Williamses to provide "alternate, uninterrupted, equally constructed access through the subject property within the 100' remainder" before recordation of the vacation. In my professional opinion, the Williamses fully complied with that condition. The new roadway was inspected by the Public Works Department of the Borough on August 23, 1991. The inspection report, a copy of which is attached as Exhibit D, revealed that the new road is 12 feet wide and contained a 6 inch gravel base and was 330 feet long and satisfied the Platting Board's requirements. In my opinion, the 1991 roadway as constructed is much better than the previously constructed jeep trail because it lies within a dedicated easement, it is cleared and has a good gravel surface, and is not blocked by trees. In constructing the new road, the Williamses were not required by the Platting Board to construct the roadway to Borough subdivision standards or so-called Pioneer Access Road Standards because they did not seek to subdivide land; rather they sought only a vacation of a portion of a previously dedicated public use easement and were required by the Board to replace existing access with comparable access.

5. I also inspected the roadways in question on July 20, 1991. I drove to the site in a two-wheel drive 1992 Chevy Cavalier and was able to drive to the end of the new roadway located within the 100 foot public use easement. The new roadway has a good sandy gravel surface with some minor rutting and one sinkhole. Photographs

attached to this affidavit accurately depict the present condition of the new roadway. This roadway, like any construction, will need maintenance. The one sinkhole I observed at midpoint in the new roadway can be filled with a pickup load of gravel.

6. At 320 feet south of the corner is a center line of the "old" jeep trail traveling southeast. This measurement indicates that the old jeep trail at this point is well outside of the original 200 foot easement. The trees that had fallen across this jeep trail appear to be naturally, downed trees with whole root stumps or shattered trunks and natural no markings indicating they had been cut by humans. In my opinion, the "old" jeep trail previously used to access the Dickerson property cannot be used by or accessed by fire trucks or other emergency vehicles.

7. Attached with this affidavit as Exhibit E is a packet containing some 20 photographs of the area in question. The photos accurately depict present condition of the area. The photographs are numbered and were taken in the following locations:

No. 4: Standing about 100' west of the NW corner of Williamses' property looking west on Trails End Road.

No. 5: Standing in the same location looking east with Williamses' driveway to the right and the new jeep trail access on the left.

No. 6: Standing about the NW corner of Williamses' property looking down the jeep trail with the Chevrolet Cavalier parked at the end.

No. 7: Standing about half way down the jeep trail with the dip in the road just before the first tree shadow.

No. 8: Looking at the end of the jeep trail with the natural vegetation beyond. Note that there are no berms or other impediments for entering onto the property.

No. 9: Standing in front of the car looking west showing the dip in the trail.

No. 10: Standing just south of the NE property corner looking south along the property line. Along the left side of the photo is the property line clearing and on the right shows the car and the end of the jeep trail.

No. 11: Standing on the property line looking west along the jeep trail.

No. 12: 320′ south of the NE corner, looking southeasterly along the jeep trail on the Dickerson property. Note the fallen-over and bent trees.

No. 13: 325′ south of the NE corner looking north along the property line, showing the previous surveyor's lath at the bottom of the photograph.

No. 14: About 220′ south of the Williamses' NE property corner looking up the clearing that may have been an old jeep trail.

No. 15: Looking up the old jeep trail at 320′ south.

No. 16: Again, looking up the jeep trail 320′ south from a slightly different advantage point for stereo viewing.

No. 17: The berm pile about 170' south of the NE corner. Note the reel tape measure and pen for scale.

No. 18, 19, 20, & 21: Pan views from the east end of the jeep trail. No. 18 is looking southeasterly, thence around to No. 21, which is looking northeasterly. Note that there are no dirt piles or debris piles that would prohibit any construction past the end of the new jeep trail.

No. 22: The Borough car at the end of the jeep trail.

No. 23: The sinkhole in the road with the tape and pen for scale. Note you can see the tracks that the Borough car made while driving through this area.

No. 24: Looking from the sinkhole in the road easterly to the Borough car.

8. I am aware of no action by the Matanuska-Susitna Borough, its agents, employees, contractors, or persons acting under the direction of the Borough to physically block or otherwise impede access by Ms. Dickerson or persons she represents to any portion of the 200 foot easement situated on the Williamses' property. As the original dedication of the 200 foot easement may also have given Ms. Dickerson and other adjoining landowners a private right of way across that property, that right of way could not be taken away by action of the Borough Platting Board or otherwise blocked by physical actions of Borough officials. If that access has been physically blocked, it has been done without the sanction of the Borough.

9. While the Williamses' vacation was reviewed by the Public Works Department, during our inspection activities, and throughout our contacts with the parties involved, I do not recall any statement or action by any person which would indicate any sort of conspiracy, plot, or other concerted effort on the part of the Borough, the Williamses, or any other person to deprive Ms. Dickerson, her Co-Plaintiffs, or any other person of lawful, physical, or legal access to their property, or to otherwise deprive them of their constitutional rights. I recall absolutely no racial comments or slurs directed at any person.

10. The Matanuska Susitna Borough does not maintain Trails End Road because it has not been accepted by the Borough for road maintenance.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

/s/ George C. Strother
George C. Strother

SUBSCRIBED AND SWORN TO before me this 28th day of July, 1992.

/s/ Vicki M. Rees
Notary Public in and for Alaska
My Commission Expires: 8-8-94

(Seal)

APPENDIX H

NEW ROAD 1992
(Photograph 8, Affidavit of George Strother)

APPENDIX I

NEW ROAD 1992
(Photograph 7, Affidavit of George Strother)

APPENDIX J

OLD JEEP TRAIL – 1992
(Photograph 15, Affidavit of George Strother)

APPENDIX K

Allan E. Tesche, Esq.
Russell & Tesche
510 L Street, Suite 300
Anchorage, Alaska 99501
(907) 258-1747
Attorneys for Matanuska-Susitna Borough

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT ANCHORAGE

M. ASHLEY DICKERSON also known as MAHALA ASHLEY DICKERSON, and WILLIAM F. BOCAST, WILLIAM ANDREW, and MARY ANDREW, Plaintiffs, vs. DUKE WILLIAMS, JEAN WILLIAMS, and MATANUSKA-SUSITNA BOROUGH, Defendants.	Case No. A92-281 Civil

AFFIDAVIT OF RICK BROWN

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

RICK BROWN, being first duly sworn upon oath deposes and states:

1. I am presently employed by the Matanuska-Susitna Borough as its Platting Officer and have held that position for approximately six (6) years. As Platting Officer, I handle or supervise all staff functions of the Matanuska-Susitna Borough Platting Division with respect to subdivision applications, their processing, review, and submission to regulatory bodies of the Matanuska-Susitna Borough, including its Platting Board and the Borough Assembly. I also serve as Secretary to the Platting Board, and am official custodian of records maintained by the Platting Board and the Platting Division with respect to subdivision activities within the Borough. I attended the meetings of the Platting Board of January 3, 1991, April 4, 1991, May 16, 1991 and August 20, 1991 which are described in this affidavit.

2. Borough subdivision records indicate that in 1976, William and Mary Andrew subdivided approximately eighty (80) acres of real property into four (4) separate parcels of land. In connection with that subdivision, and as required by the Borough, the Andrews conveyed to the owners of real property adjacent to the subdivision and to the general public easements for purposes of right of way. The right of way easement ran east-west and was 200 ft. in width. Attached as Exhibit A is a true and correct copy of those conveyances. Conveyance of a right of way to the public in general over the property described was required as a condition of Borough approval of their subdivision.

3. Jeep trails have been constructed in portions of the 200 foot easement for purposes of providing vehicular access across the Andrews' property and to adjoining parcels. Jeep trails crossing the southern 100 foot portion of the easement area were constructed for that purpose. Construction of those trails was accomplished in a manner consistent with Borough approval of the 1976 subdivision, except that portions of those trails appear to traverse private property not encumbered by the 1976 easement. The aerial photograph attached to the affidavit of George Strother depicts the condition of the property as it existed before vacation of a portion of the public use easement in 1991.

4. On June 20, 1991, Duke and Jean Williams received approval by the Platting Board of the Matanuska-Susitna Borough to vacate the southern 100 foot portion of the public use easement previously dedicated by William and Mary Andrews. A true and correct copy of Resolution Serial No. 91-5-V executed on behalf of the Platting Board of the Matanuska-Susitna Borough on September 9, 1991, details that action. Exhibit B. In connection with that approval, the Williamses were required to provide "alternate, uninterrupted, equally constructed access through the subject property within the 100' remainder easement prior to recordation of the vacation resolution." The Williamses complied with that condition by construction of a new road ("jeep trail") located wholly within the north 100 foot portion of the easement previously granted by the Andrews. That construction was completed on or about August 23, 1991.

5. As required by Section 16.10.065 of the Borough Code, owners of record of certain real property were

provided with written notice of the Williamses' application for vacation of a roadway easement in Case No. PPH-5. That case was first set for public hearing before the Platting Board on January 3, 1991. Paragraphs 2 and 3 of the affidavit of Jill Carricaburu describe the newspaper advertisements for that and subsequent public hearings conducted by the Platting Board, as well as the specific personal notice mailed to owners of record of affected parcels, including Ms. Dickerson.

6. The notification of public hearing sent to Ms. Dickerson and other owners of record invited written comments on the proposed action. Attached as Exhibit C is a true and correct copy of written comments received by the Borough from M. Ashley Dickerson with respect to the proposed vacation. The Borough also received a more formal "Oppositioin to Vacation of Easement" from Ms. Dickerson on or about December 17, 1990, in which she opposed the proposed vacation, and promised to appear in person at the hearing of January 3, 1991, and to present telephonic testimony of the original subdivider, William Andrew, with respect to the application. Attached as Exhibit D is a true and correct copy of that document which was filed with the Board by Ms. Dickerson before the hearing of January 3, 1991.

7. On January 3, 1991, the Platting Board met to consider the Williamses' application for vacation set forth in Case No. PPH-5. Attached as Exhibit E is a true and correct copy of minutes of that meeting. Those minutes indicate that Ms. M. Ashley Dickerson was present and testified in opposition to the vacation request. As indicated on page 2 of those minutes, Ms. Dickerson advised the Board that William Andrew, who owns a deed of trust

on the subject property, is available by telephone for testimony to the Board and opposed the application. Ms. Dickerson also represented to the Board that Mr. Larry Card, an owner of adjacent property, also opposed the vacation. At the conclusion of the public hearing of January 3, 1991, the Board continued the matter until its first meeting in April 1991, in order to receive additional information from the parties.

8. The Board next met on April 4, 1991, to review the matter. At the request of petitioners, Duke and Jean Williams, the case was continued until May 16, 1991, in order to allow additional time for the Williamses's engineers to perform requested test holes and soil samples. Attached as Exhibits F and G are true and correct copies of the Williamses' request for a continuance and the staff comment on that request.

9. On May 16, 1991, the Board again reviewed the matter and resumed its public hearing. Present at that hearing, and testifying before the Board, were Ms. Dickerson and Mr. Larry D. Card, a co-owner of the Dickerson property. At the conclusion of the public hearing, the Board postponed action until June 20, 1991. Attached as Exhibit H is a true and correct copy of the Board's minutes of May 16, 1991.

10. Prior to the June 20, 1991, hearing, the Board received an additional letter from Ms. Dickerson dated June 11, 1991, with respect to the Williamses's easement vacation, which letter again reiterated her opposition to the proposed vacation. A copy of that letter is attached as Exhibit I. On June 20, 1991, the Board again considered the Williamses' vacation and took additional testimony.

Ms. Dickerson and Mr. Card testified on June 20, 1991, in opposition to the proposed vacation. Attached with this affidavit as Exhibit J is a true and correct copy of the Board minutes of June 20, 1991.

11. Attached also as Exhibits K, L, and M are true and correct copies of the customary "Notices of Platting Board Actions" prepared by Platting Board staff following the public hearings of January 3, 1991, May 16, 1991, and June 20, 1991. Attached with this affidavit as Exhibit N is a true and correct copy of the staff analysis and recommendation submitted to the Platting Board before its meeting of June 20, 1991.

12. On August 15, 1991, the Platting Board reviewed its earlier action with respect to the Williamses' easement. Review of this matter was requested by staff solely for the purpose of determining whether the Platting Board, in its action of June 20, 1991, had in fact required construction of the "new" roadway within the 100 foot easement to meet higher pioneer access standards. In that meeting, the Borough Platting Board did not change, alter, otherwise modify the decision made on June 20, 1991. Instead, informal commentary during that meeting indicated that certain members did not intend to require construction of the new roadway to higher pioneer access standards. Attached to this affidavit as Exhibit O is a true and correct copy of the minutes of the Board's meeting of August 15, 1991.

13. Ms. Dickerson did not appeal the Platting Board's action to the Borough's Board of Adjustment and Appeals as allowed by MSB 15.38 within the time provided by law for such appeals. Under state law, the

Borough Assembly has the right to veto vacation of public use easements or dedications. That action must be taken within thirty days following vacation of an easement by the platting Board. No such action was taken by the Borough Assembly, as allowed by law, and accordingly, Resolution Serial No. 91-5-V was prepared and recorded, thereby completing the vacation. Except for this lawsuit, no appeal to any body has been taken by Ms. Dickerson or her co-owners.

14. Official records of the Platting Division of the Matanuska-Susitna Borough reveal no appeal or other legal challenge was made to the Platting Board's action of June 20, 1991, within 30 days of that date, or September 9, 1991, the date upon which John Duffy, as Planning Director, executed Resolution Serial No. 91-5-V of the Platting Board.

15. It is my professional opinion that the roadway completed by the Williamses in August 1991 meets or exceeds the requirements of Resolution Seal No. 91-5-V for the following reasons: The roadway was inspected by the Public Works Department of the Borough on August 23, 1991. The inspection revealed that the new road is 12 feet wide and contained a 6 inch gravel base and was 330 feet long and complied with Resolution Serial No. 91-5-V. I also inspected the roadway on July 17, 1992. The new roadway does not traverse property outside of the easement, is relatively straight, and contains a gravel base, providing superior access than the earlier one.

16. Certain Borough roads must meet what are called "pioneer access standards." Resolution Serial No.

91-5-B did not, however, require construction of the alternate access by the Williamses to "pioneer construction standards" because the Williamses did not subdivide their property. Instead, the Williamses were required only to provide equivalent physical access in the northern part of the original easement after the south 100 feet was vacated.

17. Of the Borough officials responsible for, and involved with, the processing of the Williamses' request for vacation of the subject property, I am perhaps the most knowledgeable. I attended the various public hearings of the Borough Platting Board as well as various conferences with the Williamses prior to official consideration by the Platting Board of their vacation request. At no time do I recall any statement or action by anybody which would indicate any sort of conspiracy, plot, or other concerted effort on the part of the Borough, the Williamses, or any other person to deprive Ms. Dickerson, her co-plaintiffs, or any other person of lawful, physical, or legal access to their property, or to otherwise deprive them of their constitutional rights. I recall absolutely no racial comments or slurs directed at any person, and with the exception of Ms. Dickerson and Mr. Card, who I understand are Black, do not know the race or nationality of other persons Ms. Dickerson claims are adversely affected by vacation of the Williamses' easement.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

/s/ Rick Brown
Rick Brown

SUBSCRIBED AND SWORN TO before me this 17th day of July , 1992.

/s/ Susan B. Lutz
Notary Public in and for Alaska
My Commission Expires: 9-6-93

APPENDIX L

Allan E. Tesche, Esq.
Russell & Tesche
510 L Street, Suite 300
Anchorage, Alaska 99501
(907) 258-1747
Attorneys for Matanuska-Susitna Borough

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT ANCHORAGE

M. ASHLEY DICKERSON also known as MAHALA ASHLEY DICKERSON, and WILLIAM F. BOCAST, WILLIAM ANDREW, and MARY ANDREW, Plaintiffs, vs. DUKE WILLIAMS, JEAN WILLIAMS, and MATANUSKA-SUSITNA BOROUGH, Defendants.	Case No. A92-281 Civil

AFFIDAVIT OF JILL S. CARRICABURU

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

JILL S. CARRICABURU, being first duly sworn upon oath deposes and states:

1. I am presently employed by the Platting Division of the Matanuska-Susitna Borough and am administrative secretary to Borough Platting Officer Rick Brown. I have been so employed for over three (3) years. My duties include the preparation of official notices for hearings of the Platting Board of the Matanuska-Susitna Borough, together with the care and custody of such notices, mailing lists utilized by the Matanuska-Susitna Borough in connection with subdivision matters, and official records maintained by the Matanuska-Susitna Borough Platting Division and its Platting Board.

2. As required by the Matanuska-Susitna Borough Code of Ordinances, owners of record of certain real property were provided with written notice of the Williamses' application for vacation of a roadway easement, contained in Case No. PPH-5. That case was set for public hearing before the Platting Board of the Matanuska-Susitna Borough on January 3, 1991. Attached as Exhibit A to this affidavit is a true and correct copy of the newspaper notice of that hearing, which notice was published in the Frontiersman on December 26, 1990. Attached as Exhibit B is a true and correct copy of the notification of public hearing which was mailed to owners of record according to Borough assessment records, whose names appear on Exhibit C, attached hereto. Those notices were mailed on or about December 3, 1990.

3. Attached also with this affidavit as Exhibits D and E are true and correct copies of the newspaper notices published in the Frontiersman advertising the

Board's hearing of May 16, 1991, and June 20, 1991, during which public testimony was taken with respect to the Williamses' application.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

/s/ Jill S. Carricaburu
Jill S. Carricaburu

SUBSCRIBED AND SWORN TO before me this 17 day of July , 1992.

/s/ Marilyn McGuire
Notary Public in and for Alaska
My Commission Expires: 2-22-93

MARILYN McGUIRE
NOTARY PUBLIC
STATE OF ALASKA

APPENDIX M

Platting Board Minutes
Regular Meeting June 20, 1991

DEFENDANT
EXHIBIT NO. J

E. CONTINUATION OF PUBLIC HEARING FOR WILLIAMS PUBLIC USE EASEMENT VACATION REQUEST from May 16, 1991 meeting.

Mr. Brown gave an overview and background of the case, stating that on December 12, 1990 eight public hearing notices on the case were mailed out. One letter of objection for the first public hearing was received from Ms. M. Ashley Dickerson. We have since received an additional letter of objection from Ms. Dickerson. Mr. Brown stated that staff recommends approval of the vacation.

Chairman opened the public hearing.

Ms. Dickerson asked the permission of the Board to show a video taken by herself and her surveyor showing the Board Members the area in question. The video was taken May 30, 1991.

After the video was shown Mr. Brown continued discussion and reiterated staff's position on the case.

Mr. Larry D. Card addressed the Board as to the recommendation for petitioner to provide equal alternate access. Further discussion continued.

Mr. Tucker called the public hearing to a close.

Mr. Campbell moved to accept the Williams Vacation on Staff Recommendations 1 through 4 with additional findings as indicated on page 27, (Findings 1 through 7).

Adding Finding number 8. A registered engineer licensed with the State of Alaska stated that a Borough approved road could be built within the north 100′ of the existing 200′ public use easement, and that the road should be built to the standard at which the standard is at west end of north 100′ and continue across to the east boundary of said easement within approximate location of the test holes supplied us by a registered engineer on the drawing submitted and stamped by Mr. F.R. Dollerhide and dated June 5, 1991.

Mr. Colberg seconded the motion. Mr. Brown added a suggested Finding, number 9. The existing jeep trail and trail constructed in May of 1991 leaves the 200′ access easement and trespasses on private property. The alternate equal access will be through a public access easement thus providing superior and legal access to the adjacent property. Motion maker approved of the additional finding to be added to the motion. Mr. Colberg also approved of the additional finding.

Mr. Colberg added an additional Finding, number 10, that the road contractor appearing in the video tape submitted for the record by Ms. Dickerson also believed that a road could well be constructed to Borough standards let alone to jeep trail equivalency. The motion maker and second, both concurred with this addition.

Mr. Strother asked that Finding, number 11, be added to the motion if acceptable by the motion maker, that the existing jeep trail access the property to the east, south of the 200′ easement. The motion maker agreed also Mr. Colberg agreed with the additional finding.

Mr. Tucker called for the vote and it passed unanimously.

The Platting Board recessed for a short break at 9:45 AM. Mr. Brown excused himself from the Platting Board in order to continue his pre-scheduled vacation. Mr. Hulbert continued the meeting as Acting Chief of Platting. Mr. Tucker reconvened the meeting at 10:00 AM.

A. CONSENT – Mr. Tucker asked if there were any consent items. Mr. Hulbert responded with no consent items.

B. PUBLIC HEARING AND PRELIMINARY PLAT WITH VARIANCE FOR ASLS 89-047 Tract D to be added to Tracts A, B & C.

On 5/30/91, 11 Public Hearing Notices were mailed out; none were returned and no objections were received.

Paul Hulbert read the Staff Review Findings of the case.

Mr. Tucker opened the public hearing, no one wishing to speak the public hearing was closed. Discussion followed.

Mr. Colberg moved to accept Staff Recommendations and that Tract D be expanded toward the State Reserve Corridor to eliminate the possibility of having little parcels between the reserve corridor and the designated parcel, Tract D. Ms. Scorup seconded the motion. Voting on the motion it passed unanimously.

C. PUBLIC HEARING AND PRELIMINARY PLAT FOR ASLS 91-067.

Mr. Hulbert stated that on 5/30/91, 19 Public Hearing Notices were sent out one has been returned and no objections received.

Mr. Hulbert gave an overview of the case. Mr. Strother inquired as to whether or not the Susitna Area Plan has been adopted.

Mr. Campbell confirmed that yes the Susitna Area Plan is in existence, and is in the process of being updated.

Motion was made by Mr. Colberg to take no action on this case at this time. Ms. Scorup seconded the motion.